

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

**MEMORANDUM & ORDER**

1:24-cv-04569(EK) (LKE)

-against-

AZ 400 HERKIMER LLC, et. al.,

Defendants.

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ERIC KOMITEE, United States District Judge:

AZ 400 Herkimer LLC has filed a letter informing the Court of its pending bankruptcy case, *In re Az 400 Herkimer*, Case No. 24-44566 (Bankr. E.D.N.Y.). See ECF 25. In light of that proceeding, plaintiff's claims against AZ 400 are automatically stayed. See 11 U.S.C. § 362(a).

AZ 400 goes on to argue that the automatic stay should extend to its codefendants in this case. See ECF 27, 29, 33. It is far from clear, however, that the stay should be extended that far. AZ 400 invokes *In Re Fogarty*, 39 F.4th 62, 73 (2d Cir. 2022) (automatic stay violated by foreclosure sale where debtor was a named defendant and had a possessory, but not financial, interest in the property of the estate). Even after *Fogarty*, however, courts in this circuit have generally stayed proceedings against non-debtor codefendants "only when a claim

against the non-debtor will have an immediate adverse economic consequence for the debtor's estate." *Saraf v. Ebix, Inc.*, No. 23-cv-1182, 2024 WL 1298246, at \*1 n.1 (2d Cir. Mar. 27, 2024) (quoting *Queenie, Ltd. v. Nygard Int'l*, 321 F.3d 282, 287 (2d Cir. 2003)); see also *CDS Bus. Servs., Inc. v. H.M.C. Inc.*, No. 19-cv-5759, 2023 WL 3847415, at \*9 (E.D.N.Y. Apr. 28, 2023) (rejecting application of the automatic stay to a guarantor and noting a "Section 362 stay is not ordinarily extended to entities such as sureties, guarantors, co-obligors, or others with a similar legal or factual nexus to the Chapter 11 debtor"). And *In re Roman Cath. Diocese of Rockville Ctr., New York*, 651 B.R. 622 (Bankr. S.D.N.Y. 2023), the primary case that AZ 400 relies on for its reading of *Fogarty*, does not dictate a contrary outcome, as the bankruptcy court in *Diocese* extended the stay to non-debtor codefendants based on the agreement of the creditors' committee. *Id.* at 646.

Nevertheless, the claim against Defendant Ahmed for a "deficiency" judgment cannot be adjudicated until the foreclosure action and sale conclude. This case is therefore administratively stayed until the bankruptcy case concludes, absent further direction from the Court. See *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016). The parties are directed to file a letter providing an update as to the status of the bankruptcy proceedings by April 30, 2025, or within a week of the

conclusion of the bankruptcy proceedings, whichever occurs first.

SO ORDERED.

/s/ Eric Komitee  
ERIC KOMITEE  
United States District Judge

Dated: December 2, 2024  
Brooklyn, New York